

AMENDED IN ASSEMBLY MAY 5, 2014  
AMENDED IN ASSEMBLY MARCH 17, 2014  
CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

## ASSEMBLY BILL

**No. 1850**

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**Introduced by Assembly Member Waldron  
(Coauthor: Assembly Member Gonzalez)**

February 19, 2014

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An act to amend Section 136.2 of the Penal Code, relating to restraining orders.

### LEGISLATIVE COUNSEL'S DIGEST

AB 1850, as amended, Waldron. Restraining orders.

Existing law authorizes a court with jurisdiction over a criminal matter to issue specified protective orders upon a good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur, including an order protecting a victim of violent crime from all contact by the defendant. The violation of a restraining order issued pursuant to these provisions is a crime.

This bill would additionally authorize a court with jurisdiction over a criminal matter to issue an order protecting a witness of violent crime from all contact by the defendant upon a good cause belief that harm to, or intimidation or dissuasion of, that witness has occurred or is reasonably likely to occur. The bill would also, for the purposes of these provisions, provide that a minor who was not a victim of, but who was physically present ~~during or located near~~ *at the time of*, an act of domestic violence, is a witness and is deemed to have suffered harm. By expanding the scope of a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 136.2 of the Penal Code, as amended by  
2     Section 1.5 of Chapter 291 of the Statutes of 2013, is amended to  
3     read:

4     136.2. (a) (1) Upon a good cause belief that harm to, or  
5     intimidation or dissuasion of, a victim or witness has occurred or  
6     is reasonably likely to occur, a court with jurisdiction over a  
7     criminal matter may issue orders, including, but not limited to, the  
8     following:

9     (A) An order issued pursuant to Section 6320 of the Family  
10    Code.

11    (B) An order that a defendant shall not violate any provision of  
12    Section 136.1.

13    (C) An order that a person before the court other than a  
14    defendant, including, but not limited to, a subpoenaed witness or  
15    other person entering the courtroom of the court, shall not violate  
16    any provisions of Section 136.1.

17    (D) An order that a person described in this section shall have  
18    no communication whatsoever with a specified witness or a victim,  
19    except through an attorney under reasonable restrictions that the  
20    court may impose.

21    (E) An order calling for a hearing to determine if an order as  
22    described in subparagraphs (A) to (D), inclusive, should be issued.

23    (F) (i) An order that a particular law enforcement agency within  
24    the jurisdiction of the court provide protection for a victim or a  
25    witness, or both, or for immediate family members of a victim or  
26    a witness who reside in the same household as the victim or witness  
27    or within reasonable proximity of the victim's or witness'  
28    household, as determined by the court. The order shall not be made  
29    without the consent of the law enforcement agency except for  
30    limited and specified periods of time and upon an express finding

1 by the court of a clear and present danger of harm to the victim or  
2 witness or immediate family members of the victim or witness.

3 (ii) For purposes of this paragraph, “immediate family members”  
4 include the spouse, children, or parents of the victim or witness.

5 (G) (i) An order protecting a victim or witness of violent crime  
6 from all contact by the defendant, or contact, with the intent to  
7 annoy, harass, threaten, or commit acts of violence, by the  
8 defendant. The court or its designee shall transmit orders made  
9 under this paragraph to law enforcement personnel within one  
10 business day of the issuance, modification, extension, or  
11 termination of the order, pursuant to subdivision (a) of Section  
12 6380 of the Family Code. It is the responsibility of the court to  
13 transmit the modification, extension, or termination orders made  
14 under this paragraph to the same agency that entered the original  
15 protective order into the Domestic Violence Restraining Order  
16 System.

17 (ii) (I) If a court does not issue an order pursuant to clause (i)  
18 in a case in which the defendant is charged with a crime of  
19 domestic violence as defined in Section 13700, the court on its  
20 own motion shall consider issuing a protective order upon a good  
21 cause belief that harm to, or intimidation or dissuasion of, a victim  
22 or witness has occurred or is reasonably likely to occur, that  
23 provides as follows:

24 (ia) The defendant shall not own, possess, purchase, receive, or  
25 attempt to purchase or receive, a firearm while the protective order  
26 is in effect.

27 (ib) The defendant shall relinquish any firearms that he or she  
28 owns or possesses pursuant to Section 527.9 of the Code of Civil  
29 Procedure.

30 (II) Every person who owns, possesses, purchases, or receives,  
31 or attempts to purchase or receive, a firearm while this protective  
32 order is in effect is punishable pursuant to Section 29825.

33 (iii) An order issued, modified, extended, or terminated by a  
34 court pursuant to this subparagraph shall be issued on forms  
35 adopted by the Judicial Council of California and that have been  
36 approved by the Department of Justice pursuant to subdivision (i)  
37 of Section 6380 of the Family Code. However, the fact that an  
38 order issued by a court pursuant to this section was not issued on  
39 forms adopted by the Judicial Council and approved by the

1 Department of Justice shall not, in and of itself, make the order  
2 unenforceable.

3 (iv) A protective order issued under this subparagraph may  
4 require the defendant to be placed on electronic monitoring if the  
5 local government, with the concurrence of the county sheriff or  
6 the chief probation officer with jurisdiction, adopts a policy to  
7 authorize electronic monitoring of defendants and specifies the  
8 agency with jurisdiction for this purpose. If the court determines  
9 that the defendant has the ability to pay for the monitoring program,  
10 the court shall order the defendant to pay for the monitoring. If  
11 the court determines that the defendant does not have the ability  
12 to pay for the electronic monitoring, the court may order electronic  
13 monitoring to be paid for by the local government that adopted  
14 the policy to authorize electronic monitoring. The duration of  
15 electronic monitoring shall not exceed one year from the date the  
16 order is issued. At no time shall the electronic monitoring be in  
17 place if the protective order is not in place.

18 (2) For purposes of this subdivision, a minor who was not a  
19 victim of, but who was physically present ~~during or located near~~  
20 *at the time of*, an act of domestic violence, is a witness and is  
21 deemed to have suffered harm within the meaning of paragraph  
22 (1).

23 (b) A person violating an order made pursuant to subparagraphs  
24 (A) to (G), inclusive, of paragraph (1) of subdivision (a) may be  
25 punished for any substantive offense described in Section 136.1,  
26 or for a contempt of the court making the order. A finding of  
27 contempt shall not be a bar to prosecution for a violation of Section  
28 136.1. However, a person so held in contempt shall be entitled to  
29 credit for punishment imposed therein against a sentence imposed  
30 upon conviction of an offense described in Section 136.1. A  
31 conviction or acquittal for a substantive offense under Section  
32 136.1 shall be a bar to a subsequent punishment for contempt  
33 arising out of the same act.

34 (c) (1) (A) Notwithstanding subdivision (e), an emergency  
35 protective order issued pursuant to Chapter 2 (commencing with  
36 Section 6250) of Part 3 of Division 10 of the Family Code or  
37 Section 646.91 shall have precedence in enforcement over any  
38 other restraining or protective order, provided the emergency  
39 protective order meets all of the following requirements:

1 (i) The emergency protective order is issued to protect one or  
2 more individuals who are already protected persons under another  
3 restraining or protective order.

4 (ii) The emergency protective order restrains the individual who  
5 is the restrained person in the other restraining or protective order  
6 specified in clause (i).

7 (iii) The provisions of the emergency protective order are more  
8 restrictive in relation to the restrained person than are the provisions  
9 of the other restraining or protective order specified in clause (i).

10 (B) An emergency protective order that meets the requirements  
11 of subparagraph (A) shall have precedence in enforcement over  
12 the provisions of any other restraining or protective order only  
13 with respect to those provisions of the emergency protective order  
14 that are more restrictive in relation to the restrained person.

15 (2) Except as described in paragraph (1), a no-contact order, as  
16 described in Section 6320 of the Family Code, shall have  
17 precedence in enforcement over any other restraining or protective  
18 order.

19 (d) (1) A person subject to a protective order issued under this  
20 section shall not own, possess, purchase, receive, or attempt to  
21 purchase or receive a firearm while the protective order is in effect.

22 (2) The court shall order a person subject to a protective order  
23 issued under this section to relinquish any firearms he or she owns  
24 or possesses pursuant to Section 527.9 of the Code of Civil  
25 Procedure.

26 (3) A person who owns, possesses, purchases or receives, or  
27 attempts to purchase or receive a firearm while the protective order  
28 is in effect is punishable pursuant to Section 29825.

29 (e) (1) In all cases where the defendant is charged with a crime  
30 of domestic violence, as defined in Section 13700, the court shall  
31 consider issuing the above-described orders on its own motion.  
32 All interested parties shall receive a copy of those orders. In order  
33 to facilitate this, the court's records of all criminal cases involving  
34 domestic violence shall be marked to clearly alert the court to this  
35 issue.

36 (2) In those cases in which a complaint, information, or  
37 indictment charging a crime of domestic violence, as defined in  
38 Section 13700, has been issued, except as described in subdivision  
39 (c), a restraining order or protective order against the defendant

1 issued by the criminal court in that case has precedence in  
2 enforcement over a civil court order against the defendant.

3 (3) Custody and visitation with respect to the defendant and his  
4 or her minor children may be ordered by a family or juvenile court  
5 consistent with the protocol established pursuant to subdivision  
6 (f), but if ordered after a criminal protective order has been issued  
7 pursuant to this section, the custody and visitation order shall make  
8 reference to, and, if there is not an emergency protective order that  
9 has precedence in enforcement pursuant to paragraph (1) of  
10 subdivision (c), or a no-contact order, as described in Section 6320  
11 of the Family Code, acknowledge the precedence of enforcement  
12 of, an appropriate criminal protective order. On or before July 1,  
13 2014, the Judicial Council shall modify the criminal and civil court  
14 forms consistent with this subdivision.

15 (f) On or before January 1, 2003, the Judicial Council shall  
16 promulgate a protocol, for adoption by each local court in  
17 substantially similar terms, to provide for the timely coordination  
18 of all orders against the same defendant and in favor of the same  
19 named victim or victims. The protocol shall include, but shall not  
20 be limited to, mechanisms for ensuring appropriate communication  
21 and information sharing between criminal, family, and juvenile  
22 courts concerning orders and cases that involve the same parties,  
23 and shall permit a family or juvenile court order to coexist with a  
24 criminal court protective order subject to the following conditions:

25 (1) An order that permits contact between the restrained person  
26 and his or her children shall provide for the safe exchange of the  
27 children and shall not contain language either printed or  
28 handwritten that violates a “no-contact order” issued by a criminal  
29 court.

30 (2) Safety of all parties shall be the courts’ paramount concern.  
31 The family or juvenile court shall specify the time, day, place, and  
32 manner of transfer of the child, as provided in Section 3100 of the  
33 Family Code.

34 (g) On or before January 1, 2003, the Judicial Council shall  
35 modify the criminal and civil court protective order forms  
36 consistent with this section.

37 (h) In any case in which a complaint, information, or indictment  
38 charging a crime of domestic violence, as defined in Section 13700,  
39 has been filed, the court may consider, in determining whether  
40 good cause exists to issue an order under subparagraph (A) of

1 paragraph (1) of subdivision (a), the underlying nature of the  
2 offense charged, and the information provided to the court pursuant  
3 to Section 273.75.

4 (i) (1) In all cases in which a criminal defendant has been  
5 convicted of a crime of domestic violence as defined in Section  
6 13700, a violation of Section 261, 261.5, or 262, or any crime that  
7 requires the defendant to register pursuant to subdivision (c) of  
8 Section 290, the court, at the time of sentencing, shall consider  
9 issuing an order restraining the defendant from any contact with  
10 the victim. The order may be valid for up to 10 years, as determined  
11 by the court. This protective order may be issued by the court  
12 regardless of whether the defendant is sentenced to the state prison  
13 or a county jail, or whether imposition of sentence is suspended  
14 and the defendant is placed on probation. It is the intent of the  
15 Legislature in enacting this subdivision that the duration of any  
16 restraining order issued by the court be based upon the seriousness  
17 of the facts before the court, the probability of future violations,  
18 and the safety of the victim and his or her immediate family.

19 (2) An order under this subdivision may include provisions for  
20 electronic monitoring if the local government, upon receiving the  
21 concurrence of the county sheriff or the chief probation officer  
22 with jurisdiction, adopts a policy authorizing electronic monitoring  
23 of defendants and specifies the agency with jurisdiction for this  
24 purpose. If the court determines that the defendant has the ability  
25 to pay for the monitoring program, the court shall order the  
26 defendant to pay for the monitoring. If the court determines that  
27 the defendant does not have the ability to pay for the electronic  
28 monitoring, the court may order the electronic monitoring to be  
29 paid for by the local government that adopted the policy authorizing  
30 electronic monitoring. The duration of the electronic monitoring  
31 shall not exceed one year from the date the order is issued.

32 (j) For purposes of this section, "local government" means the  
33 county that has jurisdiction over the protective order.

34 SEC. 2. No reimbursement is required by this act pursuant to  
35 Section 6 of Article XIII B of the California Constitution because  
36 the only costs that may be incurred by a local agency or school  
37 district will be incurred because this act creates a new crime or  
38 infraction, eliminates a crime or infraction, or changes the penalty  
39 for a crime or infraction, within the meaning of Section 17556 of  
40 the Government Code, or changes the definition of a crime within

- 1 the meaning of Section 6 of Article XIII B of the California
- 2 Constitution.

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